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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

2013 AUG 5 PM 3 41

IN THE MATTER OF THE LEGISLATIVE )  
PETITION FOR REVIEW AND )  
RECOMMENDATIONS ON )  
DELMARVA POWER & LIGHT COMPANY )  
UTILITY BILL TRANSPARENCY )  
(FILED JUNE 20, 2013) )

DELAWARE P.S.C.  
PSC DOCKET NO. 13-250

**EXCEPTIONS OF THE PUBLIC ADVOCATE  
TO THE PRESIDING OFFICER'S JULY 30, 2013 ORDER  
GRANTING JOHN NICHOLS' PETITION TO INTERVENE**

Public Advocate David L. Bonar, by and through his counsel, hereby excepts to Order No. 8428 granting intervenor status to John Nichols ("Mr. Nichols"), and in support of its exceptions states as follows:

1. On July 10, 2013, Mr. Nichols submitted a petition to intervene in this proceeding. In his petition, he requests intervenor status because of his "unique knowledge of, and interest in, energy issues affecting Delaware." (Petition at 1). He conclusorily asserts that his interest will not be adequately represented by the current parties in the docket because he does not believe that they have "the same interest" as he does "regarding the cost of renewable energy." *Id.* Mr. Nichols avers that his intervention is in the public interest because he has "in-depth knowledge of renewable energy legislation and initiatives," which he seeks to have "clearly explained" on utility bills. *Id.*

2. On July 23, 2013, the Public Advocate objected to Mr. Nichols' intervention on the following grounds: (1) several of the existing parties (the petitioners, the Public Advocate, and the Caesar Rodney Institute) would adequately represent Mr. Nichols' interest; (2) Mr. Nichols would have the ability to submit comments in which he would be able to share his "unique knowledge of, and interest in, energy issues affecting Delaware" and his "in-depth knowledge of renewable energy legislation and initiatives;" and (3) the sole focus of the proceeding is to determine whether (and if so, how) Delmarva's customers' bills should contain a separate breakout of the cost of renewable energy and other

legislatively-mandated energy costs; thus, Mr. Nichols' "knowledge of renewable energy legislation and initiatives" would be irrelevant. (Objection of the Public Advocate to John Nichols' Petition to Intervene at 1-3).

3. By Order dated July 30, 2013, the Presiding Officer rejected the Public Advocate's objection and granted Mr. Nichols' petition to intervene. The Presiding Officer gave the following reasons for allowing the intervention: (1) "it is the Commission's practice to liberally grant petitions to intervene" (Order No. 8428 at 2); (2) this proceeding is not a "structured rate case" but rather is an investigation in which different views are encouraged, and Mr. Nichols could have a viewpoint that would be helpful to the parties (*id.*); and (3) Mr. Nichols has intervened in previous proceedings. *Id.* at 3.

4. The Public Advocate respectfully excepts to the Presiding Officer's order granting Mr. Nichols' intervention. First, Rule 1000.2.9.1.3 of the Delaware Public Service Commission's (the "Commission") Rules of Practice and Procedure (26 *Del. Admin. Code* §1000.2.9) provides that a person seeking to intervene in a proceeding shall file a petition that includes "a concise statement of why the petitioner's interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest." Mr. Nichols' petition does not state why his interest will not be adequately represented by the parties, and his conclusory statements as to his interests and knowledge do not demonstrate that his participation will be in the public interest.

5. Second, the Public Advocate respectfully submits that the Commission's "liberal intervention" policy has resulted in its ignoring its own rule regarding interventions. The Commission's policy of allowing anyone to intervene who files a petition has resulted in allowing anyone who wants to intervene to do so, regardless of whether his interest is already adequately represented. The Public Advocate is not saying that all interventions have been improvidently granted (and he acknowledges that previous Public Advocates have not objected to such interventions); however, the current Public Advocate believes that he should be permitted to do the job that the General Assembly has tasked him with: to represent the interests of utility consumers, especially residential and small commercial consumers – before the Commission.

6. Third, without commenting on whether his interventions in previous proceedings were properly granted, the mere fact that the fact that Mr. Nichols has intervened in those prior proceedings does not mean that his intervention in *this* proceeding is appropriate. As noted previously, the petitioners, the Public Advocate and the Caesar Rodney Institute (“CRI”) are all parties to this proceeding and will bring the same perspective to the proceedings as Mr. Nichols will. His intervention is unnecessary since he can put his positions forth in public comments.

7. Last, the Presiding Officer’s purported distinction between a “structured rate case” and an “investigation” fails because neither the Public Utilities Act (“PUA”), the Administrative Procedures Act (“APA”) nor the Commission’s rules make such a distinction. Neither the PUA nor the Commission’s rules address distinctions between proceedings at all. The APA does distinguish between procedures – but only between “case decisions” and “regulations.” The APA defines a case decision as:

*any agency proceeding or determination that a named party as a matter of past or present fact, or of threatened or contemplated private action, is or is not in violation of a law or regulation, or is or is not in compliance with any existing requirement for obtaining a license or other right or benefit. Such administrative adjudications include, without limitation, those of a declaratory nature respecting the payment of money or resulting in injunctive relief requiring a named party to act or refrain from acting or threatening to act in some way required or forbidden by law or regulation under which the agency is operating.*

29 Del. C. §10102(3) (emphasis added). The APA defines a regulation as “any statement of law, procedure, policy, right, requirement or prohibition formulated and promulgated by an agency as a rule or standard, or as a guide for the decision of cases thereafter by it or by any other agency, authority or court.” 29 Del. C. 10102(7). Notably, there is no definition of an “investigation.”

8. There is no doubt that this is a “case decision” as defined in the APA. There is a named party here – Delmarva Power. The petition requests the Commission to require Delmarva to include on its monthly bills the cost of each of the “various legislatively mandated energy initiatives such as the Renewable Energy Portfolio Standard[s], Bloom Energy, and Low Income Assistance.” (Petitioners’ Petition at 1-2). Any decision by the Commission will either require



Delmarva to act – by including the requested information on its monthly bills – or to maintain the status quo. This is not a regulation under the APA because the only party that will be bound by the Commission’s decision here is Delmarva Power. The Commission’s decision here will not serve as a “statement of law, procedure, policy, right, requirement or prohibition formulated and promulgated by an agency as a rule or standard, or as a guide for the decision of cases thereafter by it ... .”

9. Neither the statutes under which this Commission operates nor its own rules make the distinction between types of proceedings that the Presiding Officer made here. Since there is no such distinction permitted, the Presiding Officer’s reliance on such a distinction cannot stand.

10. The Public Advocate respectfully requests the Commission to apply its own rule regarding intervention, starting with this case. Members of the public will have ample opportunity to share their knowledge and opinions about this docket without having to become parties. Mr. Nichols will not bring anything to the proceeding that current parties are not bringing, and to the extent that Mr. Nichols would claim to represent the public, that is the Public Advocate’s responsibility.<sup>1</sup>

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<sup>1</sup> The Public Advocate has reviewed interventions in prior cases by various entities. He notes that these entities have provided reasons for intervening that tread on the Public Advocate’s allocated duties and responsibilities under his enabling statute, 29 *Del. C.* §8716. Consequently, he will begin taking a more aggressive approach to proposed interventions.

The Public Advocate acknowledges that he did not object to the intervention of either the CRI or the Delaware Department of Natural Resources and Environmental Control (“DNREC”). He did not object to CRI’s intervention because CRI addresses the issue from a statewide perspective with an emphasis on how these initiatives affect businesses located in Delaware and who might locate in Delaware. That is a different interest than the Public Advocate. The Public Advocate did not object to DNREC’s intervention because, upon information and belief, DNREC will be advocating against disclosing the costs of the various initiatives on Delmarva’s customers’ bills. That is definitely a different interest than the Public Advocate, who will encourage the Commission to mandate such disclosure.

Respectfully submitted,

/s/ Regina A. Iorii

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Counsel for the Public Advocate

Dated: August 5, 2013

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE LEGISLATIVE	)	
PETITION FOR REVIEW AND	)	
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(FILED JUNE 20, 2013)	)	

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 5, 2013, I caused a copy of the attached **EXCEPTIONS OF THE PUBLIC ADVOCATE TO THE PRESIDING OFFICER'S ORDER GRANTING JOHN NICHOLS' PETITION TO INTERVENE** to be served on all persons on the attached service list in the manner indicated.

/s/ Regina A. Iorii  
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Counsel for the Public Advocate

Dated: August 5, 2013.

**SERVICE LIST - PSC Docket No. 13-250**

**As of July 31, 2013**

**IN THE MATTER OF THE LEGISLATIVE PETITION FOR REVIEW AND RECOMMENDATIONS  
ON DELMARVA POWER & LIGHT COMPANY UTILITY BILL TRANSPARENCY**

**Delaware Public Service Commission**

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**Division of the Public Advocate**

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**Interveners**

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